

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SANDRA DELL BANKS,

Plaintiff,

v.

MR. & MRS. BUCK RICHARD
ALLEN, husband and wife,

Defendants.

NO. CV-06-338-RHW

**ORDER DISMISSING
COMPLAINT**

Before the Court are Plaintiff's First Amended Complaint against Defendants Mr. and Mrs. Buck Richard Allen (Ct. Rec. 8) and Motion for Counsel (Ct. Rec. 9). Plaintiff brings a *pro se* claim against Defendants. By separate Order, the Court granted Plaintiff leave to proceed *in forma pauperis* (Ct. Rec. 5). Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), the Court must review a complaint filed *in forma pauperis* for legal sufficiency, and dismiss it if it is "frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief." *See Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) ("section 1915(e) applies to all *in forma pauperis* complaints").

After initially reviewing Plaintiff's Complaint, which consisted of a single caption page identifying the parties, the Court issued an Order to Amend the Complaint (Ct. Rec. 7), providing Plaintiff with instruction and an opportunity to amend her Complaint to comply with the requirements of § 1915(e)(2) and Federal Rule of Civil Procedure 8. In response, Plaintiff filed her First Amended

1 Complaint (Ct. Rec. 8), which the Court has also reviewed. After reviewing the
2 First Amended Complaint, the Court finds this action must be dismissed because
3 the Court does not have subject matter jurisdiction over Plaintiff's claim.

4 Plaintiff's Complaint does not meet the requirements of 28 U.S.C.
5 § 1915(e)(2). Specifically, Plaintiff "fails to state a claim on which relief may be
6 granted." 28 U.S.C. § 1915(e)(2)(B)(ii). In her First Amended Complaint,
7 Plaintiff describes events leading up to an alleged assault and rape, but she does
8 not include sufficient facts to establish federal subject matter jurisdiction. The
9 United States District Court is a court of limited jurisdiction¹, meaning it must have
10 both subject matter jurisdiction over the claims alleged and personal jurisdiction
11 over the parties involved. In 28 U.S.C. § 1331, Congress granted federal district
12 courts jurisdiction to adjudicate cases arising under the United States Constitution
13 or federal statutes. In 28 U.S.C. § 1332, Congress granted federal courts
14 jurisdiction to adjudicate cases in which the matter in controversy exceeds \$75,000
15 and the dispute is between citizens of different states.

16 Plaintiff's First Amended Complaint certainly recites egregious events.
17 However, the actions complained of do not arise under the Constitution or federal
18 statutes, and the case is between parties who are both residents of Washington
19 State. Although Plaintiff may state a claim under State law, this Court does not
20 possess subject matter jurisdiction to hear it. Because the Court is without
21 jurisdiction and cannot provide Plaintiff with the relief she seeks, the Court finds
22 that repleading will not cure the deficiencies in Plaintiff's First Amended
23 Complaint. When it is absolutely clear that the deficiencies in a complaint cannot
24 be overcome by amendment, the Court need not provide an opportunity to amend.
25 *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 247
26 (9th Cir. 1990). Therefore, the Court must dismiss Plaintiff's First Amended
27 Complaint for failure to state a claim on which relief may be granted under 28

28 ¹ A court has jurisdiction over a case if it has power to decide the case.

1 U.S.C. § 1915(e)(2)(B)(ii).

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Plaintiff's First Amended Complaint (Ct. Rec. 8) is **DISMISSED**
4 **without prejudice.**

5 2. Plaintiff's Motion for Counsel (Ct. Rec. 9) is **DENIED as moot.**

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 Order, enter judgment of dismissal without prejudice, forward a copy to Plaintiff,
8 and **close the file.**

9 **DATED** this 15th day of March, 2007.

10 *s/ Robert H. Whaley*

11 **ROBERT H. WHALEY**
12 Chief United States District Judge

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